

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Ellen Ambroff, et al.,

No. C 08-4289 JL

Plaintiffs,

CASE MANAGEMENT AND
PRETRIAL ORDER

v.

American Medical Systems, et al.,

Defendants.

Pursuant to Fed. R. Civ. P. 16 and Civ. L.R. 16-10(b), the following case management and pretrial order is entered:

1. TRIAL DATE

a. Jury trial will begin on **December 6, 2010** at 9:00 a.m. in Courtroom F, 15th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102.

b. The length of the trial will be not more than 15 days.

2. DISCOVERY

Non-Expert Discovery Cutoff April 5, 2010

Designation of Plaintiffs' Experts with Reports May 10, 2010

Designation of Defendant's Experts with Reports May 24, 2010

Designation of Rebuttal Experts with Reports June 7, 2010

Expert Discovery Cutoff July 7, 2010

In the event of a discovery dispute the parties shall use the following procedure:

1 Parties shall meet and confer in person, or, if counsel are located outside the Bay
2 Area, by telephone, to attempt to resolve their dispute informally. A mere exchange of letters,
3 telephone calls, or facsimile transmissions does not satisfy the requirement to meet and
4 confer.

5 If, after a good faith effort, the parties have not resolved their dispute, they shall
6 prepare a concise joint statement, of five pages or less, stating the nature and status of their
7 dispute. The parties shall not file affidavits or exhibits. If a joint statement is not possible, each
8 side may submit a two-page individual statement. The Court will advise the parties regarding
9 the need, if any, for formal briefing or a hearing.

10 3. MOTIONS

11 All dispositive motions shall be served and filed not less than **thirty-five (35)** days prior
12 to the scheduled hearing date. Any opposition shall be served and filed no later than **twenty-**
13 **one (21)** days prior to the hearing date. Any reply to the opposition shall be served and filed
14 no later than **fourteen (14)** days prior to the hearing. Prior to a dispositive motion, the parties
15 shall meet and confer and, at the time the motion is filed, submit a joint statement of
16 undisputed facts.

17 4. ALTERNATIVE DISPUTE RESOLUTION (ADR)

18 The parties to continue ADR process.

19 5. A further Case Management Conference shall be held on October 14, 2009 at
20 10:30 a.m.

21 6. PRETRIAL CONFERENCE

22 a. A final pretrial conference shall be held on November 24, 2010, at 11:00
23 a.m., in Courtroom F, 15th Floor. Each party shall attend personally or by counsel who will try
24 the case.

25 b. **Not less than thirty (30) days** prior to the date of the pretrial
26 conference, all counsel or parties shall meet and fulfill the requirements of Civil Local Rule 16-
27 10(b).

28

1 c. **Not less than twenty (20) days** prior to the pretrial conference, counsel
2 or parties shall

3 (l) serve and file a joint pretrial statement pursuant to Local Rule 16-10
4 (b)(6);

5 The pretrial statement shall include the disclosures required by Fed. R. Civ. P. 26(a)(3)
6 as well as the following:

7 **THE ACTION**

8 Substance of the Action

9 Relief Prayed

10 **FACTUAL BASIS FOR THE ACTION**

11 Undisputed Facts

12 Disputed Factual Issues

13 Agreed Statement

14 Stipulations

15 **DISPUTED LEGAL ISSUES**

16 (List)

17 **TRIAL PREPARATION**

18 Witnesses to be Called

19 Exhibits, Schedules and Summaries;

20 Trial

21 Estimate of Trial Time

22 Use of Discovery Responses at Trial

23 Further Discovery or Motions

24 **TRIAL ALTERNATIVES AND OPTIONS**

25 Settlement Discussions

26 Amendments - Dismissals

27 Bifurcation, Separate Trial of Issues

28 **MISCELLANEOUS**

Any other concerns of the parties

d. At the same time that the parties file their joint pretrial statement they shall also:

(ii) Serve and file trial briefs, which shall specify each cause of action and defense remaining to be tried along with a statement of the applicable legal standard (no opposition shall be filed);

(iii) Serve and file motions *in limine*, which shall be contained in one document. Motions in limine will be decided at the Pretrial Conference.

e. Serve and file a list of excerpts from discovery that will be offered at trial, specifying the witness, page and line references and whether the excerpt is to be offered in lieu of testimony or as impeachment;

f. Serve and file a list of witnesses likely to be called at trial, in person or by deposition, other than solely for impeachment or rebuttal, with a brief statement describing the substance of the testimony to be given;

g. Serve and file a numerical list of exhibits (including demonstrative exhibits that may be admitted into evidence but not those that are purely illustrative), with a brief statement describing the substance and purpose of each exhibit and the name of the sponsoring witness;

h. Exchange exhibits which shall be premarked, tabbed and in binders (plaintiff shall use numbers and defendant shall use letters); and deliver the original and **two** duplicate sets of all premarked exhibits to chambers (exhibits are not to be filed) at least one week before trial.

(See Label)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. _____

Exhibit No. _____

Date entered: _____

RICHARD W. WIEKING, Clerk

By: _____

Deputy Clerk

j. Serve and file proposed joint voir dire questions and joint jury instructions for cases to be tried by jury (further instructions regarding jury instructions below);

k. Serve and file proposed findings of fact and conclusions of law for cases to be tried by the Court.

l. Serve and file a proposed verdict form which contains no reference to submitting party.

m. **Two courtesy copies** of trial briefs and motions in limine shall be provided.

n. No party shall be permitted to call any witness or offer any exhibit in its case in chief that is not disclosed in these pretrial filings without leave of court and for good cause.

7. **Not less than nine calendar days** prior to the pretrial conference, counsel or parties shall serve and file any opposition or objection to those items required by section 6 (e), (f),(j), (k) and (l) of this order. Additionally, counsel or parties shall file any objections to the qualifications of expert witnesses contained in the opposing party's witness list. Objections not filed as required will be deemed waived. No replies shall be filed. All motions and objections shall be heard at the pretrial conference unless otherwise ordered.

8. JURY TRIAL

a. Counsel shall submit an **agreed upon set** of additional voir dire questions to be posed by the Court. Any voir dire questions on which counsel cannot agree may be submitted separately. Counsel will be allowed brief follow-up voir dire after the

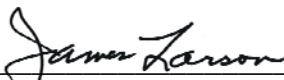
1 Court's questioning.

2 b. The following jury instructions from the Manual of Model Civil Jury
3 Instructions for the Ninth Circuit (April 2007) will be given absent objection: 1.1B, 1.1C, 1.3,
4 1.6 - 1.14, 1.18, 1.19, 2.1 - 2.4, 2.11, 3.1 - 3.4.. The Ninth Circuit Manual of Model Civil Jury
5 Instructions is available on the web site for the U.S. District Court for the Northern District of
6 California at www.cand.uscourts.gov. Click on the 9th Circuit home page button at the lower
7 left of the first screen and then choose the Manual of Model Civil Jury Instructions from the list
8 on the right hand side of the next screen. Counsel shall also submit an agreed upon set of
9 case-specific instructions, using the Ninth Circuit Manual of Model Civil Jury Instructions
10 where appropriate. Do not submit duplicates of those listed above. Any instructions to which
11 counsel cannot agree may be submitted separately. Each requested instruction shall be
12 typed in full on a separate page with citations to the authority upon which it is based and a
13 reference to the party submitting it. A **second blind copy** of each instruction and verdict form
14 shall also be submitted omitting the citation to authority and the reference to the submitting
15 party.

16 9. All documents filed with the Clerk of the Court shall list the civil case number
17 followed by the initials "JL." One copy shall be clearly marked as a **chambers** copy.

18 IT IS SO ORDERED.

19 DATED: June 29, 2009

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21 
22 James Larson
23 Chief Magistrate Judge

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